



**Homeland
Security**

Privacy Office, Mail Stop 0655

November 29, 2018

SENT BY ELECTRONIC MAIL TO: foia@americanoversight.org

Austin R. Evers
Executive Director
1030 15th Street, NW
Suite B255
Washington, DC 20005

Re: 2018-HQFO-00932

Dear Mr. Evers:

This is the electronic final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated May 1, 2018, and received by this office on May 2, 2018. You are seeking 1. all DHS forms, policies, instructions, or agreements provided to DHS employees or otherwise implemented since January 20, 2017 that reference communications with Congress, including those with either non-disclosure or non-disparagement provisions, and including all modifications, rescissions, or other changes; 2. forms, policies, instructions, or agreements that purport to limit the ability of current or former DHS employees to communicate with Congress, whether explicitly or as part of a general restriction on communications; 3. other records deemed responsive to Chairman Meadows and Ranking Member Connolly's February 6, 2017 letter, which requested information regarding DHS nondisclosure forms, policies, instructions and agreements and their compliance with the Whistleblower Protection Enhancement Act, and any other records produced to Congress as a result of Chairman Meadows and Ranking Member Connolly's letter (Date Range for Record Search: From 1/20/2017 To 5/1/2018).

A search of the Office of Legislative Affairs and the Office the Undersecretary for Management for documents responsive to your request produced a total of 22 pages. I have determined that 21 pages of the records are releasable in their entirety and 2 pages are partially releasable pursuant to FOIA Exemption 6.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

.If you need any further assistance or would like to discuss any aspect of your request, please contact the analyst below who processed your request and refer to **2018-HQFO-00932**. You may send an e-mail to foia@hq.dhs.gov, call 202-343-1743 or toll free 1-866-431-0486, or you may contact our FOIA Public Liaison in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Maura Busch

Maura Busch
FOIA Program Specialist

Enclosure(s): Responsive Documents, 22 pages

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

February 7, 2017

The Honorable John Kelly
Department of Homeland Security
800 K Street, N.W.
Washington, D.C. 20528

Dear Secretary Kelly:

We are writing to request information about your agency's use of nondisclosure agreements. Recently there have been news reports that guidance in some agencies raised concerns regarding the implications for federal employees' personal communications including, in some instances, communications with Congress.

Starting in 1988, Senator Chuck Grassley introduced an amendment known as the "anti-gag" provision to the Treasury, Postal Service and General Government Appropriations Act.¹ This provision has been included in appropriations laws since 1988, most recently in the Consolidated Appropriations Act of 2016.² In 2012, Congress unanimously passed the Whistleblower Protection Enhancement Act (WPEA), which codified the requirement and made its violation a prohibited personnel practice.³

That Act requires every executive branch nondisclosure policy, form, or agreement to contain the following explicit statement:

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities, created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.⁴

¹ Pub. L. No. 100-440.

² Pub. L. No. 114-113, as continued by Pub. L. No. 114-254.

³ 5 U.S.C. § 2302(b)(13).

⁴ *Id.*

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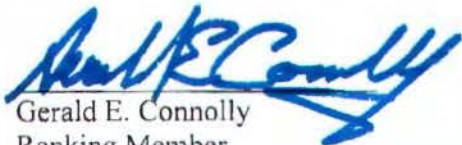
The law also requires any agency using a nondisclosure policy, form, or agreement to post the statement on the agency website along with relevant Executive Orders and statutes.

We want to ensure that this law is fully implemented. Accordingly, please provide the following information by February 20, 2017:

- (1) all forms, policies, instructions, or agreements provided to employees or otherwise implemented since January 1, 2016 through the present, that reference communications with Congress, including those with either non-disclosure or non-disparagement provisions, and including all modifications, rescissions, or other changes;
- (2) all forms, policies, instructions, or agreements that purport to limit the ability of current or former employees to communicate with Congress, whether explicitly or as a part of a general restriction on communications; and
- (3) a detailed statement of all efforts that your department has taken to post the "anti-gag" provision on its website, as well as relevant Executive Orders and statutes.

Please contact (b)(6) with the Committee majority staff at (b)(6) or (b)(6) with the Committee minority staff at (b)(6) with any questions about this matter. Thank you for your prompt attention to this request.

Sincerely,



Gerald E. Connolly
Ranking Member
Subcommittee on Government Operations



Mark Meadows
Chairman
Subcommittee on Government Operations



Homeland
Security

FEB 6 2018

The Honorable Gerald E. Connolly
Ranking Member
Subcommittee on Government Operations
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Ranking Member Connolly:

Thank you for your February 7, 2017 letter to the Department of Homeland Security (DHS). Secretary Nielsen asked that I respond on her behalf.

DHS takes seriously its obligations to provide avenues for its employees to safely report wrongdoing should they see it and to protect those who do report from retaliation. These are critical mechanisms to protect the integrity, effectiveness, and efficiency of all DHS programs, and we take seriously our obligation to educate our employees about these mechanisms. Each year, the Department sends a message to the workforce on whistleblower protections and their rights. The most recent message, dated November 29, 2017, covered recent changes to the whistleblower protection statutes and reiterated existing avenues to make whistleblower disclosures.

The responses to your specific questions, as they pertain to the Department level, are enclosed. This response does not include information from the Office of Inspector General. Because your request seeks information about the Whistleblower Protection Enhancement Act's (WPEA) requirements as to non-disclosure agreements, we have considered the Office of Special Counsel's 2012 Memorandum for Executive Departments and Agencies on this subject in evaluating the information sought by this request.¹ Pursuant to that memorandum, the WPEA provisions on non-disclosure agreements generally do not cover confidentiality clauses in settlement agreements, as such clauses generally only restrict disclosure of the terms and conditions of the settlement and do not restrict the disclosure of any other information.

¹ The Office of Special Counsel's memorandum is available at <https://osc.gov/Resources/OSC%20Memorandum%20on%20Whistleblower%20Law%20and%20Non%20Disclosure%20Agreements%2003%2014%2013.pdf>.

Thank you again for your letter and interest in this important issue. Chairman Meadows, who co-signed your letter, will receive a separate, identical response. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, reading "Claire M. Grady". The signature is fluid and cursive, with the first name "Claire" being the most prominent.

Claire M. Grady
Under Secretary for Management

Enclosures

**The Department of Homeland Security's Response to
Chairman Meadows and Ranking Member Connolly's February 7, 2017 Letter**

- 1. All forms, policies, instructions, or agreements provided to employees or otherwise implemented since January 1, 2016, through the present, that reference communications with Congress, including those with either non-disclosure or non-disparagement provisions, and including all modifications, rescissions, or other changes.**

Between January 1, 2016 and January 1, 2018, the Department of Homeland Security (DHS) provided No FEAR Act and Whistleblower Protection reminders, which the Under Secretary for Management sent to all employees and supervisors on February 8 and 12, 2016 respectively and the Deputy Under Secretary for Management again sent to employees on November 29, 2017. These notices emphasized the protections in the Whistleblower Protection Act, Whistleblower Protection Enhancement Act (WPEA) of 2012, and Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017. Of specific relevance to your inquiry, these notices clearly set out avenues for reporting perceived violations of that statute.

To further reinforce employee awareness of Whistleblower Protections, and as part of the Office of Special Counsel's (OSC's) 2302(c) certification process, the Department:

- Placed Whistleblowing, Whistleblowing Retaliation, Prohibited Personnel Practices and Hatch Act posters prominently in all facilities and posted them on intranet
- Provided information on prohibited personnel practices and whistleblower disclosures to new employees as part of the Department's Standardized New Employee Orientation program
- Provided current employees information on prohibited personnel practices and whistleblower disclosures, along with information on DHS's one-stop-resource website annually
- Ensured all supervisors took OSC-required training on prohibited personnel practices and whistleblower disclosures (training is a requirement in all Component learning management systems)

The Department received OSC 2302(c) certification on September 26, 2016.

- 2. All forms, policies, instructions, or agreements that purport to limit the ability of current or former employees to communicate with Congress, whether explicitly or as a part of a general restriction on communications.**

DHS does not have a policy that limits, or is intended to limit, the lawful ability of current or former employees to communicate with Congress.

- 3. A detailed statement of all efforts that your department has taken to post the "anti-gag" provision on its website, as well as relevant Executive Orders and statutes.**

As part of the Department's efforts to highlight the protections and avenues available to all whistleblowers, the aforementioned employee notices are also advertised on the Department's one-stop-shop web resource for Whistleblower Protection.

This web resource contains the required language for agency non-disclosure policies, forms, and agreements; Executive Orders and statutory provisions; Frequently Asked Questions; and a host of resources on whistleblower protections and rights. It also has links to the Office of Special Counsel pages on Prohibited Personnel Practices, Disclosure of Wrongdoing, Hatch Act, and Uniformed Services Employment and Reemployment Rights Act (USERRA); links to relevant guidance documents and statutory authorities (specifically including 5 United States Code § 7211, Antidiscrimination, Right to Petition Congress); and an Office of Personnel Management training video on Whistleblower Protection and Prohibited Personnel Practices.

Copies of the February 2016 and November 2017 notices, as well as the web resource are also enclosed. The Office of Inspector General (OIG) may have taken additional steps to notify employees of this provision, but, as stated in the cover letter, we are not responding on behalf of OIG.


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Keyword



EMPLOYEE RESOURCES

ORGANIZATION

POLICIES

FORMS

LIBRARY & RESOURCES

DHS.GOV

DHS Connect > Organization > Components > Management > No FEAR Act and Whistleblower Protection

2/19/2016 6:09 PM

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No FEAR Act and Whistleblower Protection

By Russ Deyo, Under Secretary for Management

EDITOR'S NOTE: This message was sent to all DHS employees on February 12.

DHS values the dedication, talent and diversity of its workforce and strives to ensure that you feel respected in a workplace free of discrimination, harassment and retaliation. The Department is committed to abiding by merit systems principles, providing protection from prohibited personnel practices, and promoting accountability in accordance with the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (No FEAR Act). By working with both employees and citizens, the Department, Office of Inspector General and Office of Special Counsel aim to protect the integrity, effectiveness and efficiency of all DHS programs.

You deserve a Department in which you can safely report wrongdoing when you see it. The Whistleblower Protection Act protects federal employees and applicants against retaliation for making whistleblower disclosures and prohibits federal agencies from taking or threatening a personnel action because an employee or applicant made a whistleblower disclosure. The Whistleblower Protection Enhancement Act of 2012 further strengthens the protections for federal employees who disclose evidence of misconduct and illegal activities.

There are a number of avenues for reporting perceived violations, including the DHS Office of Inspector General, Office of Special Counsel and Congress. To help you easily determine both what you should report and how to report suspected issues, we have created a one-stop-shop web resource – [DHS Whistleblower Protection](#). At this site you can find frequently asked questions, see what training the Department offers, what legal protections are available, and a number of other helpful tools and guidance. If you believe you have been subjected to discrimination or retaliation for protected equal employment opportunity (EEO) activity, contact your component EEO office within 45 calendar days of the date of the alleged discriminatory or retaliatory act, or the date you knew or should have known of the alleged discrimination. Refer to [Filing an Equal Employment Opportunity Complaint](#) for more information.

Regarding training, the No FEAR Act and 5 Code of Federal Regulations § 724.202 requires federal agencies to provide training every two years to all employees regarding their rights and remedies under federal antidiscrimination, whistleblower and retaliation laws. As such, you are required to complete the mandatory "DHS No Fear Act Training" through your respective learning management systems. The training takes approximately 45 minutes to complete. Please ensure your training is up-to-date.

You play a key role in keeping the Department honest, efficient and accountable. Together, leadership will ensure you can securely and confidentially report issues so that we can all build a Department free from waste, fraud and abuse.

Thank you for your personal engagement.

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DEPARTMENT OF HOMELAND SECURITY

Whistleblower Protection

The Whistleblower Protection Act (WPA) protects federal employees or applicants against retaliation for making whistleblower disclosures. It prohibits federal agencies from taking or threatening a personnel action because an employee or applicant made a whistleblower disclosure. The **Whistleblower Protection Enhancement Act of 2012** (WPEA) was signed into law by President Obama on November 27, 2012, and strengthens the protections for federal employees who disclose evidence of waste, fraud or abuse.

DHS is committed to protecting the rights of employees who report what they reasonably believe are violations of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety. By working together with employees and the public, the department, Office of Inspector General (OIG) and Office of Special Counsel (OSC) aim to protect the integrity, effectiveness and efficiency of all DHS programs.



**Prohibited
Personnel
Practices**



**Disclosure of
Wrongdoing**



Hatch Act



USERRA

FREQUENTLY ASKED QUESTIONS

- What are examples of disclosures that may be reported?**
- What disclosures are protected under the Whistleblower Protection Act?**
- How do I make a disclosure of wrongdoing?**
- What do I do if I feel I am the victim of Whistleblower Retaliation?**
- If I make a whistleblower disclosure, may I keep my identity confidential?**
- What happens after I file a disclosure with OSC?**
- Can a manager be held accountable for retaliating against a whistleblower?**
- What training is available?**

NON-DISCLOSURE AGREEMENTS

- Required language for agency non-disclosure policies, forms or agreements**
- Executive Orders and statutory provisions**

LEGAL PROTECTIONS

- Access to Classified Information**
- Contractor/Subcontractor Rules**
- Uniformed Coast Guard Members' Rules**

ADDITIONAL RESOURCES

- **DHS OIG Hotline Poster**

GUIDANCE DOCUMENTATION

- **DHS Information Sheet on
Department of Homeland**

- **DHS OIG Hotline Online Allegation Form**

Office of Special Counsel

- **Role of the OSC (OSC)**
- **Disclosure of Wrongdoing (OSC)**
- **Uniformed Services Employment and Reemployment Rights Act (USERRA) (OSC)**
- **Prohibited Personnel Practices (PPPs) (OSC)**
 - **PPP Poster (OSC)**
- **Alternative Dispute Resolution (OSC)**
- **Whistleblower Poster (OSC)**
- **Training Video on Federal Whistleblowers (OSC)**
- **Whistleblower Retaliation Poster (OSC)**
- **"Your Rights as a Federal Employee" (OSC)**
- **"Know Your Rights When Reporting Wrongs" pamphlet (OSC)**
- **Hatch Act (OSC)**
 - **Hatch Act and Federal Employee Poster (OSC)**

Office of Personnel Management

- **Training Video on WPEA and Prohibited Personnel Practices (OPM)**

Security Personnel Anti-discrimination Rights, Responsibilities, and Remedies

- **DHS Anti-discrimination Policy Statement**
- **Pilot Program for Enhancement of Contractor Employee Whistleblower Protections** (DHS USCG Deviation from FAR 3.908)
- **DHS Memorandum on PPD-19**
- **Hatch Act (OSC)**
- **No Fear Act (GPO)**
- **Whistleblower Protection Act of 2012**
- **Presidential Policy Directive-19 (PPD-19)**
- **ODNI Memorandum on Whistleblower Protection**
- **Freedom of Information Act (OPM)**
- **Military Whistleblower Protection Act (Title 10, U.S.C., § 1034)**
- **National Defense Authorization Act (Section 828)**
- **Antidiscrimination; Right to Petition Congress (5 USC § 7211)**
- **Whistleblower Protections for Contractor Employees (FAR 3.908)**

From: [Office of the Under Secretary for Management](#)
Subject: Whistleblower Protection
Date: Wednesday, November 29, 2017 11:31:20 AM



Homeland Security

November 29, 2017

Dear Colleagues,

Last month, the President signed into law the *Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017* to honor a U.S. Department of Veterans Affairs psychologist who suffered significant retaliation for reporting wrongdoing at work. Dr. Kirkpatrick committed suicide as a result. In his memory, the new law works to ensure that supervisors cannot exact retribution on employees who make protected disclosures about misconduct or illegal activities. The law includes mandatory penalties for supervisors who are found to have retaliated against a whistleblower. This law is part of the commitment by the Department and the Federal government to provide you a workplace in which you can safely report wrongdoing when you see it.

In addition to the 2017 law, the *Whistleblower Protection Act* protects federal employees and applicants against retaliation for making whistleblower disclosures and prohibits federal agencies from taking, or threatening, action because an employee or applicant made a whistleblower disclosure. The *Whistleblower Protection Enhancement Act of 2012* further strengthens the protections for federal employees who disclose evidence of misconduct and illegal activities. As a Department, we want every employee to be both empowered and protected in their reporting of any misconduct or illegal activities. By working together with employees and the public, the Department, Office of Inspector General (OIG), and Office of Special Counsel (OSC) aim to protect the integrity, effectiveness, and efficiency of all DHS programs. As a measure of our commitment to these protections, the Department's whistleblower protection program worked for many years and obtained OSC certification of the program in 2016.

There are a number of avenues for reporting perceived violations, including to the DHS OIG, OSC, and U.S. Congress. To help you easily determine both what you should report and how to report suspected issues, we have created a web resource – [DHS Whistleblower Protection](#). At this site, you can find frequently asked questions, see what training the Department offers, what legal protections are available, and a number of other helpful tools and guidance. If you believe you have been subjected to discrimination or retaliation for protected equal employment opportunity (EEO) activity, contact your component EEO office within 45 calendar days of the date of the alleged discriminatory or retaliatory act, or the date you knew or should have known of the alleged discrimination. Refer to [Filing an Equal Employment Opportunity Complaint](#) for more information. Additional information regarding your rights as a whistleblower, the types of disclosures that are protected, and the complaint process is available on the [OIG's Whistleblower Protection Unit website](#). This unit ensures Department employees and contract personnel are aware of the role and

importance of whistleblowers in improving the effectiveness and efficiency of the Department's operations. The unit also provides education on your legal rights and protections against retaliation. More information about protected disclosures is also on the [OSC website](#).

Remember, the manner by which we carry out our mission is also critical. We all have a responsibility to report wrongdoing and you should never be afraid to report illegal or unethical behavior that occurs here at DHS. Whistleblowers are protected by law and retaliation is prohibited. Your service and sacrifice on behalf of DHS deserve nothing less.

Sincerely,

Chip Fulghum
Deputy Under Secretary for Management

With honor and integrity, we will safeguard the American people, our homeland, and our values.



Homeland
Security

FEB - 6 2018

The Honorable Mark Meadows
Chairman
Subcommittee on Government Operations
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Meadows:

Thank you for your February 7, 2017 letter to the Department of Homeland Security (DHS). Secretary Nielsen asked that I respond on her behalf.

DHS takes seriously its obligations to provide avenues for its employees to safely report wrongdoing should they see it and to protect those who do report from retaliation. These are critical mechanisms to protect the integrity, effectiveness, and efficiency of all DHS programs, and we take seriously our obligation to educate our employees about these mechanisms. Each year, the Department sends a message to the workforce on whistleblower protections and their rights. The most recent message, dated November 29, 2017, covered recent changes to the whistleblower protection statutes and reiterated existing avenues to make whistleblower disclosures.

The responses to your specific questions, as they pertain to the Department level, are enclosed. This response does not include information from the Office of Inspector General. Because your request seeks information about the Whistleblower Protection Enhancement Act's (WPEA) requirements as to non-disclosure agreements, we have considered the Office of Special Counsel's 2012 Memorandum for Executive Departments and Agencies on this subject in evaluating the information sought by this request.¹ Pursuant to that memorandum, the WPEA provisions on non-disclosure agreements generally do not cover confidentiality clauses in settlement agreements, as such clauses generally only restrict disclosure of the terms and conditions of the settlement and do not restrict the disclosure of any other information.

¹ The Office of Special Counsel's memorandum is available at <https://osc.gov/Resources/OSC%20Memorandum%20on%20Whistleblower%20Law%20and%20Non%20Disclosure%20Agreements%2003%2014%2013.pdf>.

Thank you again for your letter and interest in this important issue. Ranking Member Connolly, who co-signed your letter, will receive a separate, identical response. Should you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

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Claire M. Grady
Under Secretary for Management

Enclosures

**The Department of Homeland Security's Response to
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The Department received OSC 2302(c) certification on September 26, 2016.

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DHS does not have a policy that limits, or is intended to limit, the lawful ability of current or former employees to communicate with Congress.

- 3. A detailed statement of all efforts that your department has taken to post the "anti-gag" provision on its website, as well as relevant Executive Orders and statutes.**

As part of the Department's efforts to highlight the protections and avenues available to all whistleblowers, the aforementioned employee notices are also advertised on the Department's one-stop-shop web resource for Whistleblower Protection.

This web resource contains the required language for agency non-disclosure policies, forms, and agreements; Executive Orders and statutory provisions; Frequently Asked Questions; and a host of resources on whistleblower protections and rights. It also has links to the Office of Special Counsel pages on Prohibited Personnel Practices, Disclosure of Wrongdoing, Hatch Act, and Uniformed Services Employment and Reemployment Rights Act (USERRA); links to relevant guidance documents and statutory authorities (specifically including 5 United States Code § 7211, Antidiscrimination, Right to Petition Congress); and an Office of Personnel Management training video on Whistleblower Protection and Prohibited Personnel Practices.

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EMPLOYEE RESOURCES

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No FEAR Act and Whistleblower Protection

By Russ Deyo, Under Secretary for Management

EDITOR'S NOTE: This message was sent to all DHS employees on February 12.

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Regarding training, the No FEAR Act and 5 Code of Federal Regulations § 724.202 requires federal agencies to provide training every two years to all employees regarding their rights and remedies under federal antidiscrimination, whistleblower and retaliation laws. As such, you are required to complete the mandatory "DHS No Fear Act Training" through your respective learning management systems. The training takes approximately 45 minutes to complete. Please ensure your training is up-to-date.

You play a key role in keeping the Department honest, efficient and accountable. Together, leadership will ensure you can securely and confidentially report issues so that we can all build a Department free from waste, fraud and abuse.

Thank you for your personal engagement.

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DEPARTMENT OF HOMELAND SECURITY

Whistleblower Protection

The Whistleblower Protection Act (WPA) protects federal employees or applicants against retaliation for making whistleblower disclosures. It prohibits federal agencies from taking or threatening a personnel action because an employee or applicant made a whistleblower disclosure. The **Whistleblower Protection Enhancement Act of 2012 (WPEA)** was signed into law by President Obama on November 27, 2012, and strengthens the protections for federal employees who disclose evidence of waste, fraud or abuse.

DHS is committed to protecting the rights of employees who report what they reasonably believe are violations of law, rule, or regulation, gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety. By working together with employees and the public, the department, Office of Inspector General (OIG) and Office of Special Counsel (OSC) aim to protect the integrity, effectiveness and efficiency of all DHS programs.



**Prohibited
Personnel
Practices**



**Disclosure of
Wrongdoing**



Hatch Act



USERRA

FREQUENTLY ASKED QUESTIONS

- What are examples of disclosures that may be reported?**
- What disclosures are protected under the Whistleblower Protection Act?**
- How do I make a disclosure of wrongdoing?**
- What do I do if I feel I am the victim of Whistleblower Retaliation?**
- If I make a whistleblower disclosure, may I keep my identity confidential?**
- What happens after I file a disclosure with OSC?**
- Can a manager be held accountable for retaliating against a whistleblower?**
- What training is available?**

NON-DISCLOSURE AGREEMENTS

- Required language for agency non-disclosure policies, forms or agreements**
- Executive Orders and statutory provisions**

LEGAL PROTECTIONS

- Access to Classified Information**
- Contractor/Subcontractor Rules**
- Uniformed Coast Guard Members' Rules**

ADDITIONAL RESOURCES

- **DHS OIG Hotline Poster**

GUIDANCE DOCUMENTATION

- **DHS Information Sheet on
Department of Homeland**

- DHS OIG Hotline Online Allegation Form

Office of Special Counsel

- Role of the OSC (OSC)
- Disclosure of Wrongdoing (OSC)
- Uniformed Services Employment and Reemployment Rights Act (USERRA) (OSC)
- Prohibited Personnel Practices (PPPs) (OSC)
 - PPP Poster (OSC)
- Alternative Dispute Resolution (OSC)
- Whistleblower Poster (OSC)
- Training Video on Federal Whistleblowers (OSC)
- Whistleblower Retaliation Poster (OSC)
- "Your Rights as a Federal Employee" (OSC)
- "Know Your Rights When Reporting Wrongs" pamphlet (OSC)
- Hatch Act (OSC)
 - Hatch Act and Federal Employee Poster (OSC)

Office of Personnel Management

- Training Video on WPEA and Prohibited Personnel Practices (OPM)

Security Personnel Anti-discrimination Rights, Responsibilities, and Remedies

- **DHS Anti-discrimination Policy Statement**
- **Pilot Program for Enhancement of Contractor Employee Whistleblower Protections** (DHS USCG Deviation from FAR 3.908)
- **DHS Memorandum on PPD-19**
- Hatch Act (OSC)
- No Fear Act (GPO)
- Whistleblower Protection Act of 2012
- Presidential Policy Directive-19 (PPD-19)
- ODNI Memorandum on Whistleblower Protection
- Freedom of Information Act (OPM)
- Military Whistleblower Protection Act (Title 10, U.S.C., § 1034)
- National Defense Authorization Act (Section 828)
- Antidiscrimination; Right to Petition Congress (5 USC § 7211)
- Whistleblower Protections for Contractor Employees (FAR 3.908)

From: [Office of the Under Secretary for Management](#)
Subject: Whistleblower Protection
Date: Wednesday, November 29, 2017 11:31:20 AM



Homeland Security

November 29, 2017

Dear Colleagues,

Last month, the President signed into law the *Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017* to honor a U.S. Department of Veterans Affairs psychologist who suffered significant retaliation for reporting wrongdoing at work. Dr. Kirkpatrick committed suicide as a result. In his memory, the new law works to ensure that supervisors cannot exact retribution on employees who make protected disclosures about misconduct or illegal activities. The law includes mandatory penalties for supervisors who are found to have retaliated against a whistleblower. This law is part of the commitment by the Department and the Federal government to provide you a workplace in which you can safely report wrongdoing when you see it.

In addition to the 2017 law, the *Whistleblower Protection Act* protects federal employees and applicants against retaliation for making whistleblower disclosures and prohibits federal agencies from taking, or threatening, action because an employee or applicant made a whistleblower disclosure. The *Whistleblower Protection Enhancement Act of 2012* further strengthens the protections for federal employees who disclose evidence of misconduct and illegal activities. As a Department, we want every employee to be both empowered and protected in their reporting of any misconduct or illegal activities. By working together with employees and the public, the Department, Office of Inspector General (OIG), and Office of Special Counsel (OSC) aim to protect the integrity, effectiveness, and efficiency of all DHS programs. As a measure of our commitment to these protections, the Department's whistleblower protection program worked for many years and obtained OSC certification of the program in 2016.

There are a number of avenues for reporting perceived violations, including to the DHS OIG, OSC, and U.S. Congress. To help you easily determine both what you should report and how to report suspected issues, we have created a web resource – [DHS Whistleblower Protection](#). At this site, you can find frequently asked questions, see what training the Department offers, what legal protections are available, and a number of other helpful tools and guidance. If you believe you have been subjected to discrimination or retaliation for protected equal employment opportunity (EEO) activity, contact your component EEO office within 45 calendar days of the date of the alleged discriminatory or retaliatory act, or the date you knew or should have known of the alleged discrimination. Refer to [Filing an Equal Employment Opportunity Complaint](#) for more information. Additional information regarding your rights as a whistleblower, the types of disclosures that are protected, and the complaint process is available on the [OIG's Whistleblower Protection Unit website](#). This unit ensures Department employees and contract personnel are aware of the role and

importance of whistleblowers in improving the effectiveness and efficiency of the Department's operations. The unit also provides education on your legal rights and protections against retaliation. More information about protected disclosures is also on the [OSC website](#).

Remember, the manner by which we carry out our mission is also critical. We all have a responsibility to report wrongdoing and you should never be afraid to report illegal or unethical behavior that occurs here at DHS. Whistleblowers are protected by law and retaliation is prohibited. Your service and sacrifice on behalf of DHS deserve nothing less.

Sincerely,

Chip Fulghum
Deputy Under Secretary for Management

With honor and integrity, we will safeguard the American people, our homeland, and our values.